



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

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Jennifer Warner
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MEMORANDUM

DATE: April 9, 2015

TO: Family Division Judges
Court Administrators
Probate and Juvenile Registers

FROM: Jodi Latuszek, Management Analyst

RE: SCAO Communication 2015-09
[Administrative File No. 2014-49](#), Court Rule Changes *Sanders* Implementation

This memo is intended to provide the family division of the circuit court with information about recent changes to Michigan Court Rules 3.903, 3.920, 3.961, and 3.965. These changes incorporate procedural mechanisms for implementing the Michigan Supreme Court's holding in *In re Sanders*, 495 Mich 394 (2014). These changes went into effect March 25, 2015.

In June 2014 the Michigan Supreme Court held that each parent is entitled to a specific adjudication of fitness before a court can exercise its dispositional authority under the Juvenile Code. *Id.* The differences in adjudication requirements pre- and post-*Sanders* necessitated some changes to the court rules to provide courts with a method of adjudicating a second parent's fitness pursuant to *Sanders*. These changes define the petitions that can be filed in an abuse and neglect case; provide for service of summons on nonrespondent parents; provide for a preliminary inquiry or preliminary hearing on an amended or supplemental petition; and require a specific adjudication of fitness for each parent after an amended or supplemental petition is authorized.

Revised Definitions

Trial. A "specific adjudication of a parent's unfitness to determine whether the parent is subject to the dispositional authority of the court." MCR 3.903(A)(27).

Amended petition. A petition filed to correct or add information to an original petition, as defined in MCR 3.903(A)(21), after it has been authorized, but before it is adjudicated. MCR 3.903(C)(2).

Supplemental petitions.

- A written allegation, verified in the manner provided in MCR 2.114(B), that a parent, for whom a petition was authorized, has committed an additional offense since the adjudication of the petition. MCR 3.904(C)(13)(a).
- A written allegation, verified in the manner provided in MCR 2.114(B), that a nonrespondent parent is being added as an additional respondent in a case in which an original petition has been authorized and adjudicated against the other parent under MCR 3.971 or MCR 3.972. MCR 3.904(C)(13)(b).
- A written allegation, verified in the manner provided in MCR 2.114(B), that requests the court terminate parental rights of a parent or parents under MCR 3.977(F) or MCR 3.977(H). MCR 3.904(C)(13)(c).

Nonrespondent parent. A parent who is not named as a respondent in an original petition filed under MCL 712A.2(b). MCR 3.903(C)(8).

Procedural Changes

Service of Process. A summons must be served on any nonrespondent parent in addition to any respondent in a child protective proceeding.

Filing Petitions. MCR 3.961(C) provides the filing requirements for amended and supplemental petitions. Under the revised rule:

- Amended petition. If a nonrespondent parent is being added to a petition as an additional respondent after an original petition has been authorized, but before there has been any adjudication in the case via plea or trial, the petitioner must file an “amended petition.” MCR 3.961(C)(1).
- Supplemental petition. If a nonrespondent is being added to a petition as an additional respondent after an original petition has been authorized AND adjudicated, the additional allegations must be filed in a “supplemental petition.” MCR 3.961(C)(2).

Hearing Requirements.

- Preliminary Inquiry: If neither the amended nor supplemental petition request placement of the child or the child is not in protective or temporary custody, the court must conduct a preliminary inquiry. MCR 3.961(C)(3).
- Preliminary hearing: If either the amended or supplemental petition filed pursuant to MCR 3.961(C)(1) or (C)(2) contains a request for removal, the court shall conduct a preliminary hearing to determine whether the petition should be authorized, using the criteria established in MCR 3.965(B). During the preliminary hearing the court must advise a nonrespondent parent of his or her right to seek placement of his or her children in his or her home. MCR 3.965(B)(8). Once a petition filed under the revised rules is authorized; the court shall proceed against each respondent in accordance with MCR 3.971 or MCR 3.972. MCR 3.961(C)(3).

These changes are consistent with the directive issued in an [SCAO memo](#) dated August 7, 2014.

If you have any questions, please feel free to contact me at latuszekj@courts.mi.gov or 517-373-2451

Court Process	Pre-Sanders	Post-Sanders (ADM File 2014-49) Effective March 25, 2015
Dispositional authority	Obtained via plea or trial regarding one parent's fitness.	Requires specific adjudication of fitness of a parent before the court can exercise dispositional authority in a manner that interferes with that parent's right to care, custody or control of the child.
Trial	Defined as a fact finding where court determines if child comes within the jurisdiction of the court.	Definition now includes "a specific adjudication of fitness." MCR 3.903(A)(27).
Nonrespondent parent	Undefined.	A parent who is not named as a respondent in an original petition filed under MCL 712A.2(b). MCR 3.903(C)(8).
Supplemental petition	Petition filed to raise new allegations since the adjudication of a petition. Or, OR A petition filed to request termination of parental rights under MCR 3.977(F).	A petition filed to raise new allegations since the adjudication of the petition. MCR 3.904(C)(13)(a). OR Petition filed to add a nonrespondent parent as an additional respondent in a case in which an original petition has been authorized and adjudicated against the other parent under MCR 3.971 or MCR 3.972. MCR 3.904(C)(13)(b). OR Petition that requests the court terminate parental rights of a parent or parents under MCR 3.977(F) or MCR 3.977(H). MCR 3.904(C)(13)(c).
Amended petition	Undefined.	Petition filed to correct an original petition prior to adjudication. MCR 3.903(C)(2).
Service of summons	Required to be served on "the respondent."	Required to be served on any respondent and "any nonrespondent parent." MCR 3.920(B)(2)(b).
Preliminary hearing requirement for supplemental or amended petition filed pursuant to <i>Sanders</i>	N/A	Conduct a preliminary inquiry where child not in custody and there is no removal request. Conduct a preliminary hearing where the child is in custody or the petition requests removal (use MCR 3.965(B)). If the petition authorized, proceed under MCR 3.971 or MCR 3.972.
Preliminary hearing advice	Requirements in MCR 3.965(B)(6)-(7) (providing that the court must advise respondent of the right to an attorney and the right to trial).	The court must advise the nonrespondent parent of the rights provided for in MCR 3.965(B)(6) and (7) <u>and</u> of his or her right to seek placement of his or her children in his or her home.